

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 953 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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DAHIBEN WD/O.BABUBHAI P MASTER

Versus

DECEASED AMRATLA S.BYHIS HEIRSKESHAVLAL AMRATLAL TURAKHIA  
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Appearance:

MR RN SHAH for Petitioners

MR PV NANAVATI for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 17/02/2000

ORAL JUDGEMENT

Petitioners, who are the original plaintiffs-landlords, have filed this Civil Revision Application under Section 29(2) of the Bombay Rents, Hotel Lodging House Rates Control Act, 1947 (for short, 'the Rent Act'), challenging the judgment and decree dated November 24, 1983 passed by the Appellate Bench of

the Small Causes Court, Ahmedabad in Civil Appeal No.68/80, by which while dismissing the appeal filed by the petitioners, the judgment and decree dated November 30, 1979 passed by the learned Judge Small Causes Court No.5, Ahmedabad in HRP Suit No.1076/75 was confirmed.

2. Petitioners are the owners of house situated at Sarangpur Kokadia Pole, Ahmedabad. Amratlal Shivilal Turakhia was the tenant of the first floor of the said house at a monthly rent of Rs.38.50 paise. The petitioners filed HRP suit No.1076/75 against the tenant Amratlal Shivilal Turakhia for possession of the suit premises on the ground that the tenant was in arrears of rent from 1.8.1973 and was not ready and willing to pay the arrears of rent. The other ground on which the suit for possession was filed was that the tenant had built a bungalow and also acquired a flat which was suitable residence to accommodate his family members. It was alleged that Kirtibhai who was one of the sons of the tenant had gone to reside in the bungalow and the suit premises were closed and hence the tenant did not require the suit premises. It was further alleged that the petitioners have a large family and, therefore, they require the suit premises reasonably and bonafide. for their personal use. The notice terminating the tenancy was served on the tenant on December 11, 1974. During the pendency of the suit by way of amendment, the petitioners alleged that the three sons of the defendant had built their flats and they do not reside in the suit premises. The petitioners further alleged that the tenant can part with two rooms keeping with him one room on southern side which would meet with his requirement and thus both the parties can be accommodated.

3. The tenant contested the suit by filing written statement at Exh.14, inter-alia, contending that he was not in arrears of rent, on the contrary the petitioners did not accept the rent as and when he was ready and willing to pay rent. It was denied that he had acquired suitable accommodation or built bungalow in any society. It was also denied that he was not occupying any part of the suit premises. It was averred that the petitioners do not require the suit premises reasonably and bonafide and there was sufficient accommodation with the petitioners to accommodate their family members. The original tenant further averred that the petitioners had several other buildings and some parts of which had fallen vacant which was rented out by the petitioners and were not kept for their personal use. The tenant further averred that greater hardship will be caused to him if decree for eviction is passed against him.

4. On the above stated pleadings of the parties, learned Judge of the Small Causes Court No.5, Ahmedabad framed issues at Exh.16. On behalf of the original plaintiff i.e. the petitioner No.2, Chandrakant Babulal Master was examined at Exh.33. The petitioner examined one Sudhirkumar Harishchandra at Exh.74 and Vasant Panachand Shah, who was the Secretary of Jeevanprabha society at Exh.76. Kishorekumar Amratlal, who is the son of the original tenant was examined at Exh.90. The tenant-defendant produced documentary evidence with the list at Exh.42. The learned Judge, Small Causes Court No.5, on appreciation of oral as well as documentary evidence held that the tenant was not in arrears of rent and he was ready and willing to pay arrears of rent. The learned Judge further concluded that the petitioner had failed to prove that the tenant had acquired or built suitable residence so as to attract provisions of Section 13(1)(1) of the Rent Act. The learned Judge further held that the petitioner had failed to prove that they require possession of the suit premises for their reasonable and bonafide use. On the above referred conclusions, the learned Judge, Small Causes Court dismissed the suit filed by the petitioners by judgment and decree dated November 30, 1979.

5. After the dismissal of the suit, the original tenant Amratlal Shivilal Turakhia, expired on January 1, 1980 and the present respondents No.1 to 3 were brought as the heirs and legal representatives of the deceased tenant Amratlal Shivilal Turakhia.

6. The petitioners filed Civil Appeal No.68/80 before the Appellate Bench of the Small Causes Court, Ahmedabad. The Appellate Bench of the Small Causes Court, on going through the evidence produced on record and after hearing the arguments of the learned Advocates for both the parties, held that on the date of the suit, deceased Amratlal Shivilal who was the original tenant had not acquired suitable residence and, therefore, provisions of Section 13(1)(1) of the Rent Act were not attracted. The Appellate Bench held that the trial court had rightly refused to pass decree for possession under Section 13(1)(1) of the Rent Act. The appellate Bench further held that the cause of action to recover possession of the suit premises from respondent No.3 Kishorebhai arose only on 1st January, 1980 and Kishorebhai was not in possession of this flat on 1.1.1980. The Appellate Bench, therefore, held that no cause of action had arisen on 1.1.1980 so as to attract provisions of Section 13(1)(1) of the Rent Act and,

therefore, the petitioners were not entitled to recover possession from Kishorebhai. The Appellate Bench, therefore, dismissed the appeal filed by the petitioners which has given rise to filing of this Civil Revision Application by the original landlord.

7. Learned counsel for the petitioners has taken me to the entire evidence produced on the record of the case and has submitted that after the death of the original tenant Amratlal Shivilal, his three sons i.e. the present opponents had become the tenants under the provisions of Section 5(11)(c) of the Rent Act and, therefore, the Appellate Bench had erred in not considering the case of the petitioners that all the three sons of the deceased Amratlal Shivilal had acquired suitable residence after coming into force of the Rent Act and, therefore, the petitioners were entitled to possession of the suit premises on the ground that the tenant had acquired suitable residence. Learned counsel for the petitioners further submitted that it was an admitted fact that all the three sons of deceased Amratlal Shivilal had acquired suitable residence and were not using the suit premises and, therefore, the petitioners were entitled to possession of the suit premises on the ground of tenants having acquired alternative and suitable residence.

8. Learned counsel for the opponents has submitted that on the relevant date of filing of the suit, the tenant had not acquired suitable residence and, therefore, the trial court as well as the Appellate Bench had rightly dismissed the suit filed by the petitioners seeking possession of the suit premises under the provisions of Section 13(1)(1) of the Rent Act. The learned counsel for the opponents further submitted that both the Courts had held that the petitioners had failed to prove that the tenants had acquired suitable residence after coming into force of the Bombay Rent Act and this being the concurrent finding of fact, this Civil Revision Application deserves to be dismissed.

9. Admittedly, the suit was filed against the original tenant-deceased Amratlal Shivilal on March 18, 1975. On the said date, deceased Amratlal had not acquired alternative or suitable residence so as to attract provisions of Section 13(1)(1) of the Rent Act. In my view, the petitioners can successfully claim decree for eviction under section 13(1)(1) of the Rent Act only when the tenant had acquired/allotted suitable residence on the said date of filing of the suit. Admittedly, deceased tenant-Amratlal Shivilal had not acquired suitable residence on the date of filing of the suit.

The submission of the learned counsel for the petitioners that all the three sons of the tenant had acquired suitable residence and, therefore, the petitioners were entitled to decree for possession under Section 13(1)(1) of the Rent Act, deserves to be rejected. Admittedly, when the suit was filed, the opponents were not the tenants and they only became the tenants on the death of the original tenant-Amratlal Shivilal i.e. on 1.1.1980. Therefore, on the date of filing of the suit, i.e. on 18.3.1975 no cause of action had arisen against the opponents No.1, 2 and 3. Therefore, the petitioners cannot succeed by contending that after the death of the deceased tenant, the opponents had become the tenants under Section 5(11)(c) of the Rent Act and as they had acquired suitable residence, decree for possession should be passed.

10. Both the Courts had concurrently held that the deceased tenant had not acquired suitable residence on the date of filing of the suit and, therefore, the petitioners were not entitled to possession of the suit premises under Section 13(1)(1) of the Rent Act. There being concurrent finding of fact by the Courts below and this being Civil Revision Application under Section 29(2) of the Rent Act, this Court cannot go into the concurrent finding of fact and reappreciate the evidence.

11. The Supreme Court in the case of Patel Valmik Himatlal v. Patel Mohanlal Muljibhai, (1988) 7 SCC 383 has laid down that powers of the High Court under Section 29(2) of the Rent Act are revisional powers with which the High Court is clothed. It empowers the High Court to correct errors which may make the decision contrary to law and which errors go to the root of the decision but it does not vest the High Court with the power to rehear the matter and reappreciate the evidence. In view of the principles laid down by the Supreme Court in the above cited decision, it will not be open to this Court to reopen the case and record a contrary finding.

12. These were the only submissions advanced by the learned counsel for the petitioner and the opponents. I do not find any merit in those submissions and therefore, this Civil Revision Application deserves to be dismissed and is accordingly dismissed. Rule discharged. No order as to costs.

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msp.